

FILED
CLERK

8:22 am, Jan 21, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

-----X **Docket#**
BOBBY HAYES, : 15-cv-00398-RRM-SIL
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Central Islip, New York
 :
COUNTY OF NASSAU, et al. : December 28, 2017
Defendants : 11:16 AM
-----X

TRANSCRIPT OF CIVIL CAUSE FOR PROCEEDINGS
BEFORE THE HONORABLE STEVEN I. LOCKE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiffs:

William Nolan, Esq.
1103 Stewart Avenue, Suite 200
Garden City, NY 11530

For Defendants:

Richard Femia, Esq.
(Telephonically)
Goldberg Segalla LLP
200 Garden City Plaza
Suite 520
Garden City, NY 11530

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
laferrara44@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1 THE CLERK: Calling case 15-cv-398, Hayes v.
2 County of Nassau, et al.

3 Counsel, please state your appearance.

4 MR. NOLAN: Yes, good morning, your Honor.

5 On behalf of the plaintiff, Bobby Hayes,
6 William Nolan, 1103 Stewart Avenue, Garden City, New
7 York.

8 THE COURT: Mr. Hayes is with you; is that
9 correct?

10 MR. NOLAN: That is correct.

11 THE COURT: All right. Welcome, Mr. Hayes.

12 MR. HAYES: Hi, how are you doing?

13 THE COURT: Please be seated.

14 And on the phone?

15 MR. FEMIA: And for the defendant, Richard
16 Femia, Goldberg Segalla --

17 THE COURT: All right.

18 MR. FEMIA: 200 Garden City Plaza, Suite 520,
19 Garden City, New York.

20 And your Honor, my (audio interference).

21 THE COURT: All right. Good morning, Mr. -- to
22 everybody, actually.

23 We're here, I have a motion for a withdrawal of
24 counsel; is that correct?

25 MR. NOLAN: Yes, your Honor.

Proceedings

1 THE COURT: All right. You need the microphone
2 in front of you. And Mr. Hayes, when you speak, you need
3 to speak into the microphone because we're recording
4 everything.

5 MR. NOLAN: That's correct, your Honor.

6 THE COURT: Okay. Mr. Femia, do you have any
7 position on this motion?

8 MR. FEMIA: The County takes no position.

9 THE COURT: Okay. Do you want to jump off the
10 phone or do you want to stay?

11 MR. FEMIA: I'll stay.

12 THE COURT: Okay. And we're having some
13 computer glitches, so I apologize. It's docket entry 34
14 is the motion to withdraw. I'll start with you, Mr.
15 Nolan, why do we need to withdraw?

16 MR. NOLAN: Your Honor, over the last several
17 months, Mr. Hayes and I have had a number of
18 conversations with regard to the direction of the case,
19 specifically with regard to theories of liability, claims
20 with regard to economic damages, as well as an overall
21 evaluation of the case and there has not been a meeting
22 of the minds whatsoever with regard to those various
23 issues.

24 THE COURT: Okay. I'm sorry, go ahead.

25 MR. NOLAN: The conversations, you know, have

Proceedings

1 escalated in tone between the two of us and approximately
2 six weeks or so ago, maybe even two months now, I
3 suggested that it might be better for Mr. Hayes to seek
4 new counsel because it was clear that he and I were no
5 longer, you know, communicating properly with regard to
6 this matter.

7 THE COURT: Okay. Mr. Hayes, did you
8 understand what your lawyer just suggested?

9 MR. HAYES: Your Honor, yes, I -- I heard what
10 he was saying just now but --

11 THE COURT: Okay. You understand his
12 perspective is essentially -- and this happens sometimes,
13 either your relationship, the relationship between the
14 attorney-client has broken down in a way where you're
15 just not on the same page any longer.

16 MR. HAYES: Your Honor, listen, I felt that Mr.
17 Nolan hasn't been in my best interest from day one of my
18 case.

19 THE COURT: Okay.

20 MR. HAYES: I told him on several occasions to
21 get certain information that definitely help in solidify
22 my case.

23 THE COURT: Okay.

24 MR. HAYES: And he had -- he -- he hasn't done
25 it, and when he did do it, it was years later. I asked

Proceedings

1 him several times over the past two, maybe three years,
2 can I have a copy of my files, what's going on, and Mr.
3 Nolan would not give me a copy of my files. He would not
4 -- like, I'd call him, he give me the runaround. Like
5 it's certain things that have been going on with me and
6 he -- he -- he -- he really was no help to me.

7 THE COURT: Okay.

8 MR. HAYES: And I feel that he's --

9 THE COURT: So tell --

10 MR. HAYES: -- not in my best interest, and
11 this is my life.

12 THE COURT: Okay.

13 MR. HAYES: This is what I'm going through.

14 THE COURT: Just to reflect back to make sure
15 that I understand, I mean it sounds like you two, the one
16 thing you do agree on is that you're not agreeing on how
17 things need to be. Is that fair to say?

18 MR. HAYES: Yes, sir.

19 THE COURT: Okay. So is it also fair to
20 conclude then that you do not object to Mr. Nolan
21 withdrawing from this case, and you'll be able to get
22 another lawyer who you might be more on the same page
23 with.

24 MR. HAYES: Listen, I don't even know where to
25 start to get another lawyer. I -- like I said, Mr. --

Proceedings

1 Mr. Nolan was withholding my files and --

2 THE COURT: No, no, no, I understand that.

3 MR. HAYES: -- and if I would've had access to
4 my files when I was asking for them several years ago, I
5 probably would've been able to get a -- a -- I actually
6 probably would've already had a new attorney by now.

7 THE COURT: Well, I would give you -- if you
8 want to proceed down this path, we can stay things. We
9 can give you time to find another attorney. In other
10 words, time wouldn't lapse during a window period, let's
11 say 60 days, where you can --

12 MR. HAYES: Well --

13 THE COURT: -- take -- do you have your file
14 now? Let me start with that.

15 MR. HAYES: No.

16 THE COURT: Okay. Mr. Nolan?

17 MR. NOLAN: Your Honor, there's something I
18 would like to bring to the --

19 THE COURT: Microphone, the microphone.

20 MR. NOLAN: Sorry -- like to bring to the
21 attention of the Court, but I would like to do so, if
22 possible, outside the presence of defense counsel.

23 THE COURT: Mr. Femia?

24 MR. FEMIA: I mean, I don't know about (audio
25 interference).

Proceedings

1 THE COURT: You're going in and out, Mr. Femia.
2 I can't hear you. It sounds like you do not consent to
3 that. Is that correct?

4 MR. FEMIA: It -- with the information that I
5 have, I don't know if it's appropriate (audio
6 interference) communications with (audio interference).

7 THE COURT: This is why I make people come to
8 court, Mr. Femia --

9 MR. FEMIA: I understand.

10 THE COURT: -- because I can't understand a
11 word you're saying. Did you have notice of today's
12 conference?

13 MR. FEMIA: Can you hear me, your Honor?

14 THE COURT: Now he's gone anyway.

15 MR. FEMIA: Hello? Your Honor?

16 THE COURT: No, he's not gone.

17 MR. FEMIA: I'm here. I could hear you. I
18 could hear feedback when I speak.

19 THE COURT: Okay. That's how I heard you
20 actually.

21 MR. FEMIA: Okay.

22 THE COURT: So let's try again. What is your
23 position?

24 MR. FEMIA: I don't know if I have enough
25 information to have an informed opinion as to whether or

Proceedings

1 not there should be ex parte communications with the
2 Court.

3 THE COURT: It sounds to me like Mr. Nolan
4 wants to communicate things that might otherwise be
5 protected by an attorney-client privilege in order to
6 better determine this motion, but he's asking for your
7 consent to do it outside of your presence.

8 MR. FEMIA: If that's what needs to happen,
9 then the County consents.

10 THE COURT: Okay. Why don't we do this then,
11 since you're on the phone instead of present in court,
12 why don't we hang up and then why don't you stay by the
13 phone, and we can get you back on once the communication
14 is concluded. How's that?

15 MR. FEMIA: That's fine.

16 THE COURT: Okay. All right. So we'll hang up
17 with you now --

18 MR. FEMIA: Okay, great.

19 THE COURT: -- and then call you back.

20 MR. FEMIA: All right. Thank you.

21 (Defense counsel disconnects)

22 THE COURT: Okay. It's just the four of us
23 now.

24 MR. NOLAN: Okay. Thank you, your Honor.

25 Just to respond to Mr. Hayes' position with

Proceedings

1 regard to requests that he made. Mr. Hayes was provided
2 with deposition transcripts, pleadings, documents
3 throughout the course of this litigation. In October,
4 there was a meeting in my office where I suggested that,
5 you know, because of the communication issues we were
6 having, that he should get new counsel, I would provide a
7 copy of the file to new counsel.

8 Mr. Hayes said he had already been speaking to
9 new counsel because we were having issues. On October
10 18th, we had a meeting. I had copied the entire file and
11 had a Staples box with all of the documents waiting for
12 Mr. Hayes. He did not show up on October 18th. In fact,
13 he just showed up on the 19th, walked into my office,
14 demanded his file. I said, I have no problem giving you
15 the file, but you just need to sign a letter
16 acknowledging receipt of the file. He refused to do
17 that.

18 MR. HAYES: Absolutely not. Absolutely not.

19 THE COURT: Well, let him finish, Mr. Hayes.
20 You'll get to say everything you need to say.

21 MR. NOLAN: He refused to --

22 THE COURT: Hold on.

23 MR. NOLAN: -- sign the letter, took the
24 letter, but the file remained behind. And in November, I
25 believe it was the 27th and the 28th, I had two

Proceedings

1 conversations with Mr. Hayes. On the 27th, I was
2 driving, I was not in the office, missed call, I called
3 him back. He told me he was aware that he had received
4 the papers with regard to the motion to be relieved. I
5 said you need to appear in court that day. I asked him
6 if he had gotten a new attorney. He said he had not but
7 confirmed that he was speaking with attorneys.

8 When I showed up in my office on November 28th,
9 the Staples box that contained the file documents for the
10 Hayes file was missing from my office.

11 THE COURT: Okay. Mr. Hayes, do you want to
12 reply?

13 MR. HAYES: Yes. The meeting that we had, when
14 I came up there to get the copy of my files because I had
15 been asking him for several years, and it was actually
16 one specific piece that I really wanted. It was the
17 telephone conversations from the Nassau County
18 Correctional Facilities. He -- he had gave me a copy of
19 that, like a year prior to it but when he gave it to me,
20 he actually end up being somehow the wrong COVID-19. So
21 when I called --

22 THE COURT: This is all on discs, we're talking
23 about?

24 MR. HAYES: Yes, this is one -- no, no, no,
25 it's a whole file but I need -- I wanted one specific

Proceedings

1 piece of my case.

2 THE COURT: Oh, a tape of a phone call that was
3 on a disc?

4 MR. HAYES: Yes.

5 THE COURT: Got it.

6 MR. HAYES: Since the deposition that I heard
7 it, I wanted to hear the rest of it because they only let
8 me hear pieces.

9 THE COURT: Got it.

10 MR. HAYES: And they presented him a copy, and
11 the copy that he gave me wasn't even in. So I'm calling
12 him, calling him, calling him, for it and he's giving me
13 the runaround. This is for several months. I'm -- hey,
14 maybe a year.

15 THE COURT: Okay.

16 MR. HAYES: This is my lawyer, what is he
17 giving me the runaround for about something about my
18 case, this is my life.

19 THE COURT: Okay. What is it that you think is
20 -- you must have -- so you have some portion of the file,
21 I guess, as a --

22 MR. HAYES: Yes, I have everything that he
23 provided me with.

24 THE COURT: Is there anything, to your
25 knowledge, at least at this point, is there anything

Proceedings

1 missing?

2 MR. HAYES: I have no idea. I've -- I've been
3 asking him for a copy of the files.

4 THE COURT: Okay.

5 MR. HAYES: I don't know what happened to the
6 Staples box he talking about. I don't have it.

7 THE COURT: Okay.

8 MR. HAYES: And I do want a copy of my -- of my
9 case.

10 THE COURT: Okay. Mr. Nolan, do you have a
11 copy of -- whatever was in the box, is there an
12 electronic copy as well, that can be put on a disc?

13 MR. NOLAN: There is not, no.

14 THE COURT: Okay. Do you have another -- did
15 you give him the originals or -- of the --

16 MR. NOLAN: No, copies.

17 THE COURT: So you have the original still.

18 MR. NOLAN: I do.

19 THE COURT: All right. Here's what I would
20 suggest. It's clear that you two are not getting along,
21 and this relationship needs to be severed, so I am going
22 to grant the motion, and we'll get Mr. Femia on the
23 phone, and I'll say only that as a conclusion.

24 What I am going to suggest then -- well, wait,
25 let's back up one more second. Mr. Hayes, at this point

Proceedings

1 in time, do you have a copy of the entire file to your
2 knowledge? I understand you can't know what's in and
3 what's not.

4 MR. HAYES: No.

5 THE COURT: Okay. Mr. Nolan, I'm going to ask
6 you or someone in your office to make another copy, put
7 it on a disc, so this way you can have it electronically.
8 You can store on the computer, Mr. Hayes. You can make
9 as many copies as you want, and there's this notion of
10 copying papers would be eliminated.

11 MR. NOLAN: There's 1,000 pages and it was at
12 cost to me, that I'm probably not going to see again,
13 this box just happened to go missing the day after I had
14 a conversation with him.

15 THE COURT: Look, there's nothing for me to say
16 about that. The box is missing. Mr. Hayes said he
17 didn't take it. The motion is to withdraw. I am going
18 to grant the motion. I want Mr. Hayes to have his
19 papers, so that they can be shopped around. It's as
20 simple as that. That is the condition of granting the
21 motion and ending this.

22 MR. NOLAN: It's got to be done because it's
23 much more expensive, believe it or not, to have files
24 scanned than it is to have them copied. That's what I
25 wanted to do originally because it is thousands of pages.

Proceedings

1 THE COURT: How many thousands of pages are we
2 talking about?

3 MR. NOLAN: I think it was 2,200 pages.

4 THE COURT: Okay. And so that will fit in one
5 box.

6 MR. NOLAN: It was in one box. Yes.

7 THE COURT: All right.

8 MR. HAYES: So Your Honor, let me just ask you
9 for one question.

10 THE COURT: Sure.

11 MR. HAYES: I don't understand why he was
12 (indiscernible) my files because -- because this -- he
13 brought it up. When I came to his office for the
14 meeting, I was (indiscernible) came on it.

15 THE COURT: You --

16 THE CLERK: You have stay near the microphone.

17 THE COURT: There's a green light at the
18 bottom.

19 MR. HAYES: Like he said, I was supposed to
20 come to his office on the 18th for the meeting. Now,
21 when I came up there, the original meeting was for me to
22 come up there and pick up my papers. Now when I -- I got
23 up there, he -- he told me he's not giving me my file
24 unless I sign-off on this paper, so he signed-off on the
25 paper for him to be off my case.

Proceedings

1 I told him, no, I'm to signing off on this in
2 order for me to get my paperwork. I --

3 THE COURT: Okay. Typically, people do sign
4 receipts in exchange for paper.

5 MR. HAYES: But that wasn't a receipt,
6 acknowledging that I have it.

7 THE COURT: Right.

8 MR. HAYES: He wanted me to sign a -- a -- a
9 letter stating that I wanted him off my case at that
10 point.

11 THE COURT: That you -- say it again, I didn't
12 hear you. You wanted him off your case?

13 MR. HAYES: Yeah, so it was like he was
14 negotiating with me --

15 THE COURT: Okay.

16 MR. HAYES: -- about my paperwork.

17 THE COURT: Regardless, we're past that point
18 then. It doesn't -- at that point, it doesn't matter.
19 What we'll do, then I will permit you to make a hard copy
20 to run it through a copy machine, I guess is what you're
21 asking, and then Mr. Hayes, do you want that shipped to
22 your home or somewhere else?

23 MR. HAYES: Now, your Honor, I --

24 THE COURT: Or do you want to pick it up?

25 MR. HAYES: Your Honor, it actually would

Proceedings

1 probably be easier for me to have it digitally because
2 everything's electronic right now and like me carrying
3 around a box of papers --

4 THE COURT: Well, it's only one box. That's
5 why I asked how many documents exactly it was and then
6 this way, if you want to take it and scan it, you'll be
7 permitted -- you can certainly do that but I am not going
8 to make Mr. Nolan incur the cost at this point, since
9 you're severing the relationship pursuant to order, not
10 at your suggestion.

11 So I will permit him to do that. The question
12 I have for you is do you want it shipped to an address,
13 which you can tell us right now, or do you want to pick
14 it up? We'll do it either way.

15 MR. HAYES: He could ship it.

16 THE COURT: What is the address? I want you to
17 put the address on the record, so there's no, you said
18 this address, no that address. What is the address you
19 want?

20 MR. HAYES: It's 86-39 --

21 THE COURT: That's 86-39 --

22 MR. HAYES: -- 208th Street --

23 THE COURT: 2-0-8th Street?

24 MR. HAYES: Yes.

25 THE COURT: Is that a house or is there an

Proceedings

1 apartment?

2 MR. HAYES: Apartment 2D, 2 as in Dog.

3 THE COURT: 2D as in David?

4 MR. HAYES: Yes.

5 THE COURT: 2D as in David.

6 MR. HAYES: That's Queens Village, New York.

7 THE COURT: Queens Village. Yeah?

8 MR. HAYES: 11427.

9 THE COURT: 11427. All right. I'm going to
10 read the whole thing back to you. Correct me if I am
11 wrong.

12 MR. HAYES: Yes, sir.

13 THE COURT: 86-39 208th Street, Apt 2D, Queens
14 Village, NY 11427.

15 MR. HAYES: Yes, sir.

16 THE COURT: That's correct?

17 MR. HAYES: That's correct.

18 THE COURT: All right. Mr. Nolan, when are you
19 going to ship that?

20 MR. NOLAN: In 30 days.

21 THE COURT: Okay. We'll have it shipped to you
22 in 30 days and I'm going to give you time at the end of
23 this, so you can take the box and scan it, bring it to a
24 lawyer, whatever you want to do.

25 Mr. Hayes, do you want it shipped -- do you

Proceedings

1 want it for signature, do you want it just left at your
2 door? How do you want it delivered?

3 MR. HAYES: Um.

4 THE COURT: It could be regular mail, whatever
5 -- tell us now, so we can get on the same page.

6 MR. HAYES: Yeah, it could be certified, so I -
7 - somebody could sign for it.

8 THE COURT: So you have to sign for it at the
9 post office. That means if you're not there, you have to
10 go to the post office and pick it up.

11 MR. HAYES: No, I don't want it that way.

12 THE COURT: So then you want it just regular
13 mail, left at your door?

14 MR. HAYES: Yeah, yeah, that's fine.

15 THE COURT: Okay. So it will be regular mail,
16 left at your door. Let's assume it takes a week to get
17 there. So how much time, once you have the documents and
18 the clock will start ticking, 37 days from now, how much
19 time do you want to go see lawyers with? I'll give you
20 60 days -- up to 60 days.

21 MR. HAYES: And what if I can't find a lawyer
22 within 60 days that want to take my case?

23 THE COURT: Then you would have to proceed
24 without a lawyer.

25 MR. HAYES: All right. So as of right now, I

Proceedings

1 will like to proceed without a lawyer, so the time will
2 keep ticking.

3 THE COURT: Okay. But then you can -- that is
4 your right to do that.

5 MR. HAYES: That's what I want -- that's what I
6 want to do.

7 THE COURT: It is easier typically to navigate
8 in court with the assistance of a lawyer. I will permit
9 you to go either way, and just because we keep going
10 doesn't mean you can't continue to look for a lawyer.
11 You can do it on parallel tracks.

12 MR. HAYES: All right.

13 THE COURT: Okay. What we're going to do now
14 then, the motion is granted. I want to get Mr. Femia,
15 your adversary back on the phone --

16 MR. HAYES: Um-hum.

17 THE COURT: -- so then we can circle back and
18 continue.

19 MR. HAYES: All right.

20 THE COURT: All right.

21 MR. HAYES: All right.

22 THE COURT: So the motion is granted with the
23 condition that within 30 days, the box of documents will
24 be shipped, Mr. Nolan.

25 Also, you'll need to go downstairs, Mr. Hayes,

Proceedings

1 and give the -- there's a clerk's office on the first
2 floor. You need them to put your address into the docket
3 because this way, if we issue an order because you're not
4 on what we call ECF, basically the computer system, we'll
5 mail you copies of everything but we need the address in
6 order to do that. I can't enter your address onto the
7 docket, the clerk has to do it downstairs. That's why I
8 need you to stop there, okay?

9 MR. HAYES: All right.

10 THE COURT: Also, through that office, there's
11 something called a pro se clerk, pro se means you're
12 without a lawyer.

13 MR. HAYES: Um-hum.

14 THE COURT: You can always ask for the pro se
15 clerk, and they could help you navigate things like that.
16 Okay?

17 MR. HAYES: Um-hum.

18 THE COURT: All right.

19 MR. HAYES: Yes, sir. So your Honor, let me
20 ask you another question.

21 THE COURT: Sure.

22 MR. HAYES: The courts can't appoint me another
23 lawyer?

24 THE COURT: No, not in civil litigation. It is
25 possible but extremely rare, you would have to make a

Proceedings

1 motion --

2 MR. HAYES: All right.

3 THE COURT: -- that you would like another
4 lawyer appointed but there are so few and far between,
5 it's only in criminal cases that you'll automatically get
6 a lawyer appointed.

7 MR. HAYES: All right. So I would like to make
8 a motion though.

9 THE COURT: Okay. Hold on. One second.
10 (Pause)

11 THE COURT: Yeah, we can do this with Mr. Femia
12 on the line. So give us one second, Mr. Hayes, and then
13 we'll continue the conversation.

14 (Pause)

15 (Mr. Femia rejoins conference)

16 THE CLERK: Mr. Femia?

17 MR. FEMIA: Yeah.

18 THE COURT: Okay, you're back, Mr. Femia?

19 MR. FEMIA: Yes, I am.

20 THE COURT: Okay. What's happened in your
21 absence is I had a dialogue with both Mr. Hayes and Mr.
22 Nolan. They explained to me the situation and I granted
23 the motion on the condition that Mr. Nolan mail a copy of
24 the file to an address for Mr. Hayes, which Mr. Hayes
25 provided and he'll do that within 30 days.

Proceedings

1 Now we're back on the record all together. Mr.
2 Hayes said he would like to make a -- he may be looking
3 for a lawyer, but would like to make a motion for the
4 appointment of counsel. I had explained that counsel is
5 only automatically appointed in criminal cases, not civil
6 cases.

7 Now with you on the line, Mr. Femia, I'm going
8 to explain Mr. Hayes, in order to make that motion, you
9 have to write a letter to the district judge. There are
10 two judges assigned to this case, I am one, and Judge
11 Bianco is the other.

12 MR. HAYES: Uh-hum.

13 THE COURT: And when you go down to the clerk's
14 office, you can even ask them to print a copy of the
15 docket sheet, which would have the judges names on it and
16 just that kind of thing.

17 You would make a motion in writing, explaining
18 (a) that you would like a lawyer appointed in a civil
19 case, and (b) the reasons why you think you should have
20 one appointed, keeping in mind that there's a limited
21 number of appointments in civil cases. So in other
22 words, your case would have to theoretically be more
23 deserving of whoever else had also asked for a lawyer.

24 Do you understand?

25 MR. HAYES: Yes, sir.

Proceedings

1 THE COURT: Okay. And you can do that by
2 letter to Judge Bianco.

3 In the meantime -- well, before you go, Mr.
4 Nolan, where were in this case? And Mr. Femia, I will
5 ask you the same question. Have depositions occurred?

6 MR. FEMIA: We were in the middle of --

7 MR. NOLAN: (Indiscernible).

8 MR. FEMIA: -- the defendant's deposition.

9 THE COURT: Mr. Femia, say it again?

10 MR. FEMIA: We conducted the plaintiff's
11 deposition and we were in the middle of the first named
12 defendant's deposition.

13 THE COURT: Okay. So then, Mr. Hayes, you're
14 familiar with the deposition process, what happens?

15 MR. HAYES: Yes, sir.

16 THE COURT: Okay.

17 MR. HAYES: Yes, sir.

18 THE COURT: Okay. And it sounds like where we
19 are in the case, is documents have been exchanged and
20 depositions are being taken. If you don't have a lawyer,
21 you would have to take the depositions and in other
22 words, be the person who asks the questions to the
23 defendants or whoever's depositions have already been set
24 up on certain dates.

25 Do you understand?

Proceedings

1 MR. HAYES: Yes, sir.

2 THE COURT: Okay. Are you prepared to go
3 forward with that, or would you like some time to find a
4 lawyer to do that on your behalf? I had already asked
5 you that.

6 MR. HAYES: No, I'm prepared to go forward.

7 THE COURT: Okay. Has a calendar already been
8 set for those depositions?

9 MR. NOLAN: No, your Honor.

10 MR. FEMIA: No.

11 THE COURT: Okay. So then Mr. Hayes, you'll
12 have to get on the phone with Mr. Femia and work out
13 dates that fit your calendar, Mr. Femia's calendar, and
14 the witness' calendar, okay?

15 MR. HAYES: Yes, sir.

16 THE COURT: Okay. Just give me one second, I'm
17 just going to pull up a scheduling order. Does anybody
18 off the top of their head know what the deadline is to
19 complete depositions?

20 MR. NOLAN: I don't, your Honor.

21 THE COURT: Mr. Femia, do you have it? I have
22 an amended scheduling order but the deadline's passed.

23 MR. FEMIA: There were several amended
24 scheduling orders. We had a few hiccups along the way in
25 the case, this application (indiscernible).

Proceedings

1 THE COURT: Okay. Well, why don't we do this? I
2 will set a new deadline. We'll set a new scheduling
3 order, this way we can all be on the same page.

4 MR. HAYES: Your Honor, can I ask you another
5 question?

6 THE COURT: Yeah, sure.

7 MR. HAYES: I don't want no -- I don't want no
8 time charged to me. I -- I would like a -- I would --
9 I'm ready and I would like to proceed to trial.

10 THE COURT: Well, we -- this -- there's no
11 charging of time here. The time is flexible. I can set
12 the time.

13 MR. HAYES: Oh.

14 THE COURT: So don't worry about that kind of
15 thing.

16 MR. HAYES: All right.

17 THE COURT: But in a civil case before a trial,
18 you have a right to take depositions and they have a
19 right to take depositions.

20 Mr. Femia, did you want to take anybody's
21 deposition other than the plaintiff's?

22 MR. FEMIA: No, your Honor. There's -- as of
23 now, we were in the middle of defendant depositions.

24 THE COURT: No, I understand but my point is
25 Mr. Hayes is certainly free to rethink how many

Proceedings

1 depositions he wants to take and make that decision in
2 which case you don't need any other depositions is what
3 am asking.

4 MR. FEMIA: Yes, your Honor.

5 THE COURT: Okay.

6 MR. FEMIA: As of right now, we don't believe
7 that we would need any depositions --

8 THE COURT: Okay.

9 MR. FEMIA: -- other than (indiscernible).

10 THE COURT: Do you intend to move for summary
11 judgment ultimately?

12 MR. FEMIA: Yes, we do.

13 THE COURT: Okay. Typically -- and this
14 happens in almost all civil cases, Mr. Hayes. At the end
15 of discovery, meaning the document exchange and the
16 depositions, the defendant will move for what's called
17 summary judgment, meaning judgment without a trial.

18 MR. HAYES: Uh-hum.

19 THE COURT: The Court -- and that would go to
20 Judge Bianco in the first instance. He may refer it to
21 me to ask me to make a recommendation about whether the
22 motion should be granted. I can tell you candidly, I
23 have no opinion and I'm not intimately familiar with the
24 facts of this case at this point at all, at which point
25 there would be a decision either granting the motion and

Proceedings

1 the case would be dismissed, or denying it and then you
2 would proceed to trial.

3 So there are still several -- we're still a
4 couple of steps away from trial, even with no delay at
5 all. So that being said, I guess there was a prior
6 discussion with Mr. Nolan and Mr. Femia about deposing
7 all of the defendants. You're still entitled to do that,
8 and you can also have subpoenas issued to nonparty
9 witnesses. You can imagine in a car accident, there
10 might've been someone standing on the corner who just saw
11 it, a person like that with no interest in the case. If
12 that person exists, you have a right to depose them, too,
13 see what their version or view of the facts might be.

14 All that being said, and you don't have to
15 decide today, but I will give you some time by which to
16 make a decision, you have to decide whether you want to
17 continue with the defendant's depositions which would
18 allow you to see what they would say at trial, in other
19 words sort of nail down their version, or you are also
20 entitled to forgo that if you want.

21 If you have a lawyer, he will say I want the
22 depositions. It --

23 MR. HAYES: I want the depositions.

24 THE COURT: Okay. So the next question is how
25 many depositions do you think you need because I am going

Proceedings

1 to give you time for it, I just want to give you a
2 reasonable amount of time.

3 MR. HAYES: From everybody that was involved in
4 the case.

5 THE COURT: Okay. But I don't know how many
6 people that is. That's why I am asking you.

7 MR. HAYES: Oh, I'll know once I -- Once I
8 receive the rest of the files and go through the
9 paperwork.

10 THE COURT: Okay. Well, right now, I see that
11 there are two -- wait a minute, one, two -- three
12 individual defendants; is that right, Mr. Femia?

13 MR. FEMIA: That is correct.

14 THE COURT: Okay. Presumably you would want to
15 take those three depositions. I will give you time for
16 all of this. Why don't we give you --

17 MR. HAYES: Is ADA Lewis (ph.) in there because
18 I -- I want a deposition from here.

19 THE COURT: I don't believe --

20 MR. HAYES: Yes, I need one --

21 THE COURT: So that would be four.

22 MR. HAYES: I need one from her. That was
23 the --

24 THE COURT: Okay.

25 MR. HAYES: -- that was the -- the -- the

Proceedings

1 prosecutor at arraignment.

2 THE COURT: Okay. What you need to do is I
3 think -- and like I said, I'm going to give you time to
4 think about this, I'm not trying to put you on the spot
5 here, that's already four people. What I am going to do
6 is give you 90 days to get all of this done, because
7 you're also going to have to arrange for a court
8 reporter, you know, a stenographer to take down all --

9 MR. HAYES: Uh-hum.

10 THE COURT: -- everything that's said. So
11 we'll give you a deadline to get all the depositions done
12 of -- I'm just looking at a calendar now -- we'll give
13 you till March 30th to do that.

14 In some cases, people want to use experts.
15 Were experts identified before, Mr. Nolan, in this case?

16 MR. NOLAN: No, your Honor.

17 THE COURT: Okay. You could imagine Mr. Hayes,
18 in a car accident case, just by way of example, if
19 somebody was injured, they might call a doctor as an
20 expert to better explain to the jury their injuries.

21 MR. HAYES: Uh-hum.

22 THE COURT: Okay? I don't know that this case
23 lends itself to experts but I would like you to think
24 about this. Before you respond, Mr. Femia, were there
25 any experts from your perspective?

Proceedings

1 MR. FEMIA: No, your Honor.

2 THE COURT: Okay.

3 MR. FEMIA: This case doesn't involve anything
4 but a false arrest claim.

5 THE COURT: Okay. All right. So it seems
6 unlikely, but Mr. Hayes, that's up to you.

7 MR. HAYES: Oh, I do have a couple of experts,
8 a couple of doctors, I --

9 THE COURT: Okay.

10 MR. HAYES: Yeah, I do.

11 THE COURT: If that's the case, there are a
12 couple of things that have to happen. One is you have to
13 identify who they are --

14 MR. HAYES: All right.

15 THE COURT: -- for Mr. Femia and you have to
16 explain the topics that they would testify about, so that
17 he has an idea. In other words, if it's a doctor about a
18 medical injury, that's a topic.

19 MR. HAYES: All right.

20 THE COURT: Whether it was a broken arm or
21 whatever the injury is.

22 MR. HAYES: Absolutely.

23 THE COURT: You would have to identify those.
24 I am going to give you a deadline by which to do that, as
25 well. You have to identify in writing.

Proceedings

1 MR. FEMIA: And your Honor, if I could just
2 briefly address that point?

3 THE COURT: Yes, sure.

4 MR. FEMIA: So if a reading of the complaint
5 shows that there is no excessive (audio interference).
6 I'm kind of confused as to why there would be the
7 identification of experts to testify possibly at trial
8 regard to any injuries that Mr. Hayes suffered.

9 MR. HAYES: You'll see at trial.

10 THE COURT: Well, what -- this is a false
11 sarrest case and excessive force, or just false arrest,
12 or something else?

13 MR. NOLAN: Both.

14 MR. FEMIA: Just false arrest.

15 THE COURT: Well, Mr. Nolan, you said both.

16 MR. NOLAN: I'm sorry, it was --

17 MR. HAYES: False arrest.

18 MR. NOLAN: -- false arrest.

19 MR. HAYES: Civil rights violation.

20 THE COURT: Well, false arrest, civil rights
21 violation is a big umbrella.

22 MR. HAYES: Yeah.

23 THE COURT: False arrest is one kind of civil
24 rights violation.

25 MR. HAYES: Uh-hum.

Proceedings

1 THE COURT: Well, were you injured during the
2 arrest?

3 MR. HAYES: Yes.

4 THE COURT: Okay. What I am going to do at
5 this point -- well, Mr. Femia, do you want to respond?
6 I'm just going to set a deadline for this. I'm just
7 giving you a schedule, we're not making rulings.

8 MR. FEMIA: Yes.

9 THE COURT: Mr. Femia, do you want to respond?

10 MR. FEMIA: Yes, your Honor. There were no
11 injuries pled nor any sort of excessive force claim.

12 THE COURT: Okay. Those are two slightly
13 different things, although typically if you're hurt
14 during an arrest, there might be an excessive force,
15 meaning an allegation that the police used excessive
16 force.

17 MR. HAYES: No, no.

18 THE COURT: Okay. I think at this point, Mr.
19 Femia, what I am going to do is I'm going to suggest Mr.
20 Hayes, you identify the individuals you say would be
21 experts, the subjects of what they would be testifying
22 about, and Mr. Femia, you could make whatever motion you
23 want in response to that, as soon as you receive the
24 disclosures.

25 Just so you're aware, Mr. Hayes, if you were to

Proceedings

1 have a doctor, for example, testify Mr. Hayes broke his
2 arm, and here's the reason why, they of course would be
3 entitled to an expert who would be allowed to examine
4 you.

5 MR. HAYES: Yes.

6 THE COURT: And then testify essentially to the
7 opposite in support of the defendants. All right? So I
8 am going to give you until March 30th which is also the
9 deadline for depositions to serve Mr. Femia with some
10 kind of written explanation of who your experts are, and
11 what they'll be testifying to, and just for the sake of
12 clarity, there are cases -- civil cases in the federal
13 courts are governed by the Federal Rules of Civil
14 Procedure. Rule 26 talks about this. So if you wanted
15 to look it up, which you can Google online or go to the
16 library, that's where you would look.

17 Mr. Femia, with no prejudice to you or making a
18 motion, or anything else, I want to give you time to
19 identify rebuttal experts if that becomes appropriate.
20 Is 30 days enough or do you want more?

21 MR. FEMIA: 30 days from now, you're saying,
22 your Honor? I'm sorry.

23 THE COURT: No, 30 days from March 30th.

24 MR. FEMIA: Oh, yes.

25 THE COURT: So it would be April 30th.

Proceedings

1 MR. FEMIA: That would be fine.

2 THE COURT: Okay. April 30th. Okay. And then
3 after that, to commence summary judgment practice which I
4 explained a moment ago, Mr. Hayes, which is an attempt to
5 get a case dismissed before trial.

6 This is Judge Bianco's case, so you would just
7 need to write a letter Mr. Femia. How much time would
8 you need after the expert disclosure to write a letter to
9 Judge Bianco?

10 MR. FEMIA: That would be April 30th for the
11 disclosure, 45 days thereafter?

12 THE COURT: So you want till June 15th?

13 MR. FEMIA: Certainly.

14 THE COURT: That's for the -- yeah, June 15th?

15 MR. FEMIA: Yes.

16 THE COURT: All right.

17 MR. FEMIA: And your Honor, if I could just
18 also say one thing --

19 THE COURT: Sure.

20 MR. FEMIA: -- with regard to the expert
21 disclosure. If we can try and cut this off now, the
22 incident took place on January 29th, 2014, so an
23 amendment of the pleadings would (audio interference)
24 cure any sort of excessive.

25 THE COURT: Okay. I think I heard what you

Proceedings

1 said that it would be late to amend the pleadings if
2 necessary. What Mr. Femia is suggesting is that
3 obviously in order for him to defend the client, he has
4 to have notice of all the claims. I have not looked at
5 the complaint prior to taking the bench today. I have no
6 idea what it says in this case.

7 He may make a motion based on what's in your
8 complaint or otherwise, Mr. Hayes, I don't know, but I'm
9 not going to cut anything of now, Mr. Femia. If you want
10 to make a motion with respect to it -- the case, make a
11 motion but Mr. Hayes has been pro se for about ten
12 minutes, so he's got to --

13 MR. FEMIA: I understand.

14 THE COURT: -- strategize out how things are
15 going to proceed, and if you make a motion, he'll -- by
16 the way, Mr. Hayes, if you get a motion in writing, you
17 need to oppose it in writing, okay?

18 MR. HAYES: Yes.

19 THE COURT: So if you get something by mail
20 from Mr. Femia, which would also be filed in court, you
21 would have to respond by mail and deliver whatever your
22 opposition is also to the clerk, so it can be filed. If
23 it's not filed, I won't see it or Judge Bianco won't see
24 it, and therefore we won't know what your thinking is.
25 Does that make sense?

Proceedings

1 MR. HAYES: Yes.

2 THE COURT: Okay. All right. So I'll put us
3 down for a final pre-trial conference in court. If the
4 defendants make a motion for summary judgment, Mr. Hayes,
5 that will likely be canceled. The pre-trial conference
6 is to schedule the trial but we'll give you something in
7 September, so that if a motion is filed, there will be
8 time to decide it.

9 (Pause)

10 MR. HAYES: Can I get a copy of all them dates?

11 THE COURT: Yes. September 13th at 11 a.m.
12 That will be on ECF, which is the Court system too but
13 we'll just hand you -- if you want to wait around for a
14 few minutes, Mr. Hayes, we'll just hand it to you --

15 MR. HAYES: All right.

16 THE COURT: -- this way you'll have it.

17 Do you have any other questions about how
18 things are proceeding, Mr. Hayes?

19 MR. HAYES: Um.

20 THE COURT: I see you nodding, but you've got
21 to say yes or no into the microphone.

22 MR. HAYES: So the deadlines to be finished
23 with my depositions is --

24 THE COURT: March 30th and I will give you
25 something that says that.

Proceedings

1 All right. In the meantime, and Mr. Femia
2 knows this, but if there's a -- let's say if you ask
3 questions and there's an objection and Mr. Femia directs
4 the witness not to answer, or you make a motion or
5 there's some kind of a disagreement, which happens
6 frequently in the course of litigation, your
7 responsibility then will be to make a motion, in other
8 words, write a letter to me or Judge Bianco saying we
9 have an issue, here's why I think I'm entitled to relief.
10 They would say no, Mr. Hayes is not entitled to relief,
11 and then you would get a ruling from the Court. You can
12 do that at any point while the discovery is going on,
13 okay? You've got to say yes or no.

14 MR. HAYES: Can you repeat that again?

15 THE COURT: Sure. If during the course of the
16 depositions or any other point in discovery -- discovery
17 are the points before the motion for summary judgment, if
18 you have a disagreement, that happens frequently as you
19 can imagine, between lawyers, you have to make what's
20 called a motion, which you can do by letter. Write a
21 letter to the court, either to me or to Judge Bianco, the
22 district judge in this case, saying I wanted to take the
23 deposition of a certain person, Mr. Femia objected and
24 said no. I need a -- so then you'll need a court order
25 to direct that to happen. You'll have to write a letter

Proceedings

1 to the court and ask for that, say I want to take the
2 deposition of this person, here are the reasons why I
3 think I'm entitled to it. Mr. Femia could then respond,
4 here's the reasons I think Mr. Hayes is not entitled to
5 ti, and then you would get a ruling from the court, and
6 it would be either yes, take the deposition or no, but
7 that's how you would resolve the disputes, by motion
8 which in this case would be a letter to the court, okay?

9 MR. HAYES: Yes, sir.

10 THE COURT: All right. Do you have any other
11 questions for me?

12 MR. HAYES: No.

13 THE COURT: All right. Mr. Femia, this will
14 all be on ECF tonight. Do you have anything you want to
15 put on the record at this point or questions?

16 MR. FEMIA: Yes, your Honor. So just to
17 clarify --

18 THE COURT: Yes.

19 MR. FEMIA: -- the matter is not stayed, the
20 plaintiff will be proceeding pro se, there's a pending
21 application for (audio interference) of counsel.

22 THE COURT: Correct. Mr. Hayes was actually --
23 part of this may have been while you were off the phone,
24 he was expressed about this, he wants to continue. He
25 doesn't want any delay in the case, right, Mr. Hayes?

Proceedings

1 MR. HAYES: Yes.

2 THE COURT: Okay. So he's going to continue
3 and if another lawyer makes an appearance on his behalf,
4 we'll handle it accordingly.

5 MR. FEMIA: Yes, your Honor. And in that case,
6 in the meantime, I would need Mr. Hayes' contact
7 information, address, and (indiscernible).

8 THE COURT: Okay. He must've given that to me
9 before you got back on the phone. I'm sorry. The
10 address -- let me start with an address.

11 MR. FEMIA: Okay.

12 THE COURT: 86-39 208th Street, Apt 2D as in
13 David, and that's Queens Village, NY 11427. That's
14 correct, right, Mr. Hayes?

15 MR. HAYES: Yes.

16 THE COURT: Okay. And then a phone number
17 where you can be reached?

18 MR. HAYES: 917 --

19 THE COURT: 917 --

20 MR. HAYES: -- 283 --

21 THE COURT: -- 283 --

22 MR. HAYES: -- 8756.

23 THE COURT: -- 8756. And the reason that's
24 important is most things, if you have a disagreement, can
25 be resolved with a phone call frankly. It's just

Proceedings

1 sometimes people talk past each other, particularly in
2 writing.

3 All right, Mr. Femia, so you have that and Mr.
4 Hayes is going to go downstairs and get this stuff
5 entered on the docket as well.

6 MR. HAYES: Yes, and I also need his contact
7 information, as well.

8 THE COURT: Okay. Mr. Femia? I think it's
9 West Street?

10 MR. FEMIA: No, your Honor. It's Goldberg
11 Segalla.

12 THE COURT: Oh, you're at Goldberg Segalla now.
13 Okay. It's 200 -- do you have a pen?

14 MR. HAYES: No.

15 THE COURT: Mr. Nolan, can you sport Mr. Hayes
16 a pen and a piece of paper? Do you have a piece of
17 paper? Oh, wait you know what? It's 200 Garden City
18 Plaza and it's 516-281-980 -- 00, sorry. Mr. Femia?

19 MR. FEMIA: Yes.

20 THE COURT: Okay. I'm just going to hand it to
21 you. I have it right here. Okay. So that's all taken
22 care of. Is there anything else? Mr. Hayes, anything
23 else?

24 MR. HAYES: Is there anything else? I'm -- I'm
25 good.

Proceedings

1 THE COURT: Okay. Nothing from Mr. Hayes. Is
2 there anything else, Mr. Femia?

3 MR. FEMIA: No, your Honor.

4 THE COURT: All right. We are concluded. Mr.
5 Hayes, wait around. We'll hand you a copy of the order.

6 MR. HAYES: All right.

7 THE COURT: All right. Thank you, all.

8 MR. NOLAN: Thank you, your Honor.

9 MR. FEMIA: All right. Thank you.

10 (Matter Concluded)

11 -o0o-

12

13

14

15

16

17

18

19

20

21

22

23

24


25

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 21st day of January 2021.


Linda Ferrara

AAERT CET 656

Transcriptions Plus II, Inc.